

PR#9833

SMOLEN, MICHAEL

3/27/2009

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

DEPOSITION OF MICHAEL DAVID SMOLEN, Ph.D.
TAKEN ON BEHALF OF THE DEFENDANTS
ON MARCH 27, 2009, BEGINNING AT 9:30 A.M.
IN STILLWATER, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

Mr. Robert Nance
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On behalf of the DEFENDANT-PETERSON FARMS, INC.:

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REPORTED BY: Laura L. Robertson, CSR, RPR

Exhibit 21

PR#9833

SMOLEN, MICHAEL

3/27/2009

Page 138

1 contribution from non-point sources occur during a
2 large runoff event?

3 A. Yes, I would say that's correct.

4 Q. All right. And would we typically expect
5 that to include phosphorous, which had originated with
6 land applied poultry litter?

7 MR. MCDANIEL: Object to the form.

8 THE WITNESS: Yes, I would say that's
9 correct.

10 Q. (BY MR. NANCE) Is there phosphorous from
11 land applied poultry litter in a large runoff event in
12 the Illinois River Watershed?

13 MR. MCDANIEL: Object to the form.

14 THE WITNESS: Is there phosphorous in runoff
15 from --

16 Q. (BY MR. NANCE) From poultry litter in a
17 major runoff event from that watershed?

18 A. I believe the answer is yes. I'm trying to
19 think if I have direct measurement of runoff. Yes, I
20 think I can find some studies that show it, too.

21 Q. Okay. Would there be a consensus among
22 water quality professionals who have studied the
23 Illinois River Watershed about whether or not poultry
24 originating with -- excuse me, phosphorous originating
25 with poultry litter gets into the water in the

1 watershed?

2 MR. MCDANIEL: Object to the form.

3 THE WITNESS: I believe there would be.

4 Q. (BY MR. NANCE) What would that consensus
5 be?

6 MR. MCDANIEL: Same objection.

7 THE WITNESS: As we have used in our
8 reports, or we have shown in our reports, phosphorous
9 from poultry production or from fields fertilized with
10 poultry litter is probably the number one source.

11 Q. (BY MR. NANCE) Okay. Let's look at page 65
12 of Exhibit 2. Do you have that in front of you?

13 A. Yes, I do.

14 Q. On that pie chart there, which is figure
15 9.2, where it says, "Litter application is 15 percent
16 of the Illinois River total phosphorous load," does
17 that 15 percent refer to direct load from the litter
18 itself on the ground, or from something else?

19 A. No, that's directly from the litter.

20 Q. Okay.

21 A. That's the result of subtracting the
22 presence and absence of litter in the model.

23 Q. Okay. Is there any part of the other
24 non-point source component which is 50 percent on that
25 pie chart which comes from elevated STP which